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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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UNITED STATES OF AMERICA,) CASE NO. 13-CR-93-JST
Plaintiff,)
v.) UNITED STATES' TRIAL MEMORANDUM
JONATHAN MOTA,) Date: February 29, 2016
Defendant.) Time: 9:30 a.m.
Court: Hon. Jon S. Tigar

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1 **I. SUMMARY OF ANTICIPATED EVIDENCE AT TRIAL**

2 Defendant Mota is charged with robbery affecting interstate commerce (Count One), use and
3 possession and discharge of a firearm during the robbery charged in Count One (Count Two), use of a
4 firearm causing the murder of Forrest Seagrave during the robbery charged in Count One (Count Three),
5 and with possession of a firearm by a convicted felon (Count Four). Count Four has been severed from
6 Counts One through Three and will be presented in a bifurcated trial. The trial is currently set for March
7 7, 2016.

8 The evidence at trial will show that, on the evening of January 18, 2013, the defendant—wearing
9 a hoodie, ski mask, baggy jeans and gloves, and armed with a silver revolver or handgun—robbed the
10 Mount Knocti Gas and Mart (hereinafter, the “Store 24”) in Kelseyville, California. In the process, the
11 defendant shot and killed Forrest Seagrave, a store clerk who was mopping up and preparing to end his
12 shift. Mr. Seagrave died from a single gunshot to the right side of his neck that traversed his upper
13 trachea and chest cavity, coming to rest just anterior to the upper portion of his left scapula. He also
14 suffered a graze gunshot wound to the fourth and fifth fingers of his right hand. The events of that
15 evening were captured on surveillance video inside the Store 24. The government will introduce that
16 video. However, the assailant went to great pains to conceal his identity. As a result, the government
17 will present additional evidence—both in the form of witness testimony and physical evidence—that
18 places the defendant at the scene of the robbery/homicide. Some of that evidence is as follows:

19 **Video Footage**

20 The government will introduce video footage from the exterior wall of the Store 24 on the
21 afternoon of January 18, 2013. The footage shows the defendant casing the Store 24 in a vehicle that
22 was stolen that very morning from a residence in Kelseyville, California. The government will also
23 introduce later footage from the same exterior wall camera, which shows the assailant entering and
24 exiting the Store 24 before and after the robbery/homicide. Next, the government will introduce video
25 footage from the exterior wall of the Napa Auto Body shop from January 18, 2013 at approximately
26 10:53 p.m. The footage shows the stolen vehicle on its path of flight from the Store 24 to the Big Valley
27 Rancheria in Lakeport, California.

28 Finally, the government will introduce video footage from the Big Valley Rancheria at various

1 times on January 18, 2013. The footage will show the stolen vehicle at the defendant's mother's home
 2 and other key locations associated with the defendant before and after the robbery/homicide.

3 **Witness Testimony**

4 The government will present witnesses during its case-in-chief who will testify that 1) the
 5 defendant was in the vicinity of the Store 24 on the date and at the time of the robbery/homicide; 2) the
 6 defendant was wearing clothes that match the clothing worn by the assailant in the store video; and 3)
 7 the defendant admitted to the murder in the days and months following the robbery/homicide.

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9 **II. EVIDENTIARY ISSUES FOR TRIAL**

10 **A. Defendant's Statements**

11 Prior statements made by a defendant are non-hearsay when offered by a party opponent – in this
 12 case, by the government. Fed. R. Evid. 801(d)(2)(A). A defendant, however, may not elicit his own
 13 prior statements; they are inadmissible hearsay. *Id.*; *United States v. Ortega*, 203 F.3d 675, 682 (9th Cir.
 14 2000). To hold otherwise would allow a defendant “to place his exculpatory statements ‘before the jury
 15 without subjecting [himself] to cross-examination, precisely what the hearsay rule forbids.’” *Ortega*,
 16 203 F.3d at 682 (quoting *United States v. Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988)). This is true
 17 even if the government has offered other portions of the defendant’s statement, and the defendant
 18 purports to offer additional portions for context under the rule of completeness, Federal Rule of
 19 Evidence 106. The rule of completeness, which applies only to written and recorded statements, does
 20 not transform inadmissible hearsay into admissible evidence. See *id.* at 682-83; *United States v.*
 21 *Collicott*, 92 F.3d 973, 983 (9th Cir. 1996) (holding that “Rule 106 ‘does not compel admission of
 22 otherwise inadmissible hearsay evidence’”).

23 In this case, defendant Mota made non-hearsay statements admitting to the murder to at least two
 24 witnesses. The defendant has also made statements on a number of jail recordings that will be offered
 25 by the United States.

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1 **B. Transcripts**

2 Transcripts of recordings the government intends to introduce in its case-in-chief will be
3 provided to the defense on the date of this filing.

4 **C. Expert Witness Testimony**

5 To date, the government has notified the defense that we expect to call the following expert
6 witnesses in the government's case-in-chief, all pursuant to Federal Rules of Evidence 702, 703, and/or
7 705, and Federal Rule of Criminal Procedure 16(a)(1)(G):

- 8 1. Arnold Josselson, M.D.
- 9 2. Toxicologist Bill Posey
- 10 3. ATF Special Agent Chris Lewis, Cellebrite Expert
- 11 4. ATF Special Agent Greg Estes, Digital and Mobile Forensics Expert
- 12 5. FBI Special Agent Donovan McKendrick, Cellebrite Expert
- 13 6. NCRIC Lead Intelligence Analyst Christopher Hernandez, Cellular Forensic Expert
- 14 7. ATF Analyst Michelle Beltz, Video Enhancement Expert
- 15 8. ATF DNA Technical Leader, Todd Bille, DNA Expert
- 16 9. Melanie Smith, California Department of Justice Latent Print Analyst
- 17 10. Lillian Tugado, California Department of Justice Senior Criminalist
- 18 11. Kay Belschner, California Department of Justice Senior Criminalist
- 19 12. Dale Cloutier, California Department of Justice Senior Criminalist
- 20 13. ATF Special Agent Debra Martinez, Intelligence Research Specialist

21 The United States has also provided the defense with curricula vitae for the proposed experts.
22 The parties are currently discussing which, if any, of the proposed experts the defense objects to.

23 Despite the February 5, 2016 deadline set by the Court, the defense has not disclosed any
24 experts.

25 **D. Stipulations**

26 On February 14, 2016, the government provided a list of 23 separate proposed stipulations to the
27 defense. The government is informed that defendant Mota is currently in talks with advisory counsel

1 regarding which, if any, of the government's proposed stipulations the defendant will agree to. The
2 government will file the stipulations as soon as we are informed of those decisions.

3 **E. Exhibit and Witness Lists**

4 The government will file its Exhibit List and Witness List on Wednesday, February 24, 2016, the
5 date set by the Court.

6 **F. Jury Instructions**

7 As discussed during the February 19, 2016 hearing, the parties will file a joint set of jury
8 instructions on Wednesday, February 24, 2016. If the parties are unable to reach agreement with respect
9 to particular instructions, each party will file its proposed "disputed" instructions separately along with
10 the basis for the inclusion of the disputed instructions.

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12 **III. CONCLUSION**

13 The United States respectfully requests leave to file such supplemental memoranda as may be
14 necessary before or during trial in this case.

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16 DATED: February 22, 2016

Respectfully submitted,

17 BRIAN J. STRETCH
18 Acting United States Attorney

19 _____/s/
20 DAMALI TAYLOR
21 SARAH HAWKINS
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